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Supreme Court of the United States

October, 1952

No. 196

GEORGE W. FERGUSON AND D. O. SPIRES,
PETITIONERS,

versus

THE STATE OF SOUTH CAROLINA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of South Carolina, filed in the above-entitled case on April 4, 1952, rehearing denied April 17, 1952.

OPINIONS BELOW

The sentence and judgment of the Trial Court is set out on page 1 of the Transcript of Record. The opinion of the Supreme Court of South Carolina is to be found in 70 S. E. (2d) 355. A certified copy of the decision below has been forwarded with the Transcript of Record.

The indictment, not printed in the Court below, is printed in the appendix to this petition.

JURISDICTION

The opinion of the Supreme Court of South Carolina was filed April 4, 1952, and a petition for a rehearing was denied on April 17, 1952. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1251 (3).

This Court has jurisdiction on the grounds that Amendments 5, 6 and 14 of the Constitution of the United States have been violated as will more fully appear below. The question of double jeopardy was first raised in the argument concerning the indictment. (See Transcript, pp. 2-9). The question was raised specifically in Exception 36 (Transcript, p. 285) as follows:

> "36. That the sentences in excess of one year as to both defendants were erroneous in that said sentences violated Section 17, Article I of the Constitution of South Carolina, and the Fifth Amendment of the Constitution of the United States, prohibiting the trial of any person twice for the same offense."

The question of double jeopardy pervades much of the record. (See also Exceptions 1, 2, 6, 24 and 25, Transcript, pp. 279-283.) This issue was before the Court below.

The appellants contended throughout the trial that the indictment was defective. (See Transcript, pp. 2-9, Exception 9, p. 280.) This issue was passed on adversely to these appellants by the Court below. See 70 S. E. (2d) p. 357.

Finally the matter of due process is the gravamen of this Court's jurisdiction. The issue, as set out below, is raised innumerable times in the record. (See Transcript, Exceptions 3, 4, 6, 7, 8, 24, 25, pp. 280, 283-284.)

In all instances the Trial Court and the Supreme Court of South Carolina have denied these appellants the immunities to which they are entitled under the Constitution of the United States.

QUESTIONS PRESENTED

Three federal questions of moment are presented in this petition, *viz.*:

(1) Were these petitioners subjected to double jeopardy by being tried under two indictments for the same crime?

(2) Did the indictments properly inform the petitioners of the charges brought against them by the indictments?

(3) Were the petitioners denied due process of law by being tried for conspiracy to commit a crime which in itself required concerted action?

STATEMENT

Petitioners were indicted, along with seventeen other defendants, on three counts by the State of South Carolina for: (1) conspiracy to violate the state's lottery statute (Section 1231, Code of Laws, State of South Carolina, 1942), (2) violation of the lottery statute itself by setting up a lottery, and (3) violation of the same statute by the sale and display of lottery tickets. Count 3 was abandoned by the State and the case went to trial on two counts.

State's testimony concerned an alleged meeting which took place on June 4, 1950, in the City of Columbia, South Carolina. Among others alleged to have been at the meeting was the petitioner Ferguson. Some Negro defendants, who had pled guilty prior to the trial, testified that the setting up of the so-called "numbers racket" was discussed

at the meeting. (See Transcript of Record, pp. 10-12.) One of the witnesses (a co-conspirator who had already confessed) testified that Ferguson claimed to "have paid off" the law.

Petitioner Spires was a detective of the Police Department of the City of Columbia. Spires and another detective were in brief attendance at the meeting; they said—and this was not controverted—that they had been called to the house. One of the co-conspirators who had already pled quoted Spires as saying:

> "Whatever they tell you is all right, because I have never turned evidence against anyone, unless I was forced to do it, and I have been on the force twenty-something years." (Transcript of Record, pp. 43-44, 98.)

No other testimony was offered in regard to these petitioners' connection with the alleged conspiracy or with the setting up of the lottery. It is admitted that the "numbers racket" did operate in Columbia during the period specified.

Ferguson did not testify, but Spires freely admitted that he had been called to the house where the alleged conspiracy took plac. He said, however, that he and the other detective had gone in response to a call and that, upon arrival, they found everything in order and shortly thereafter departed. (Transcript of Record, pp. 227-229.) This version was substantiated by the other detective who testified for the State.

The jury found Ferguson guilty on both counts; he was sentenced to serve three years and pay a fine of $1,000.00 on the first count (conspiracy) and he was given a sentence of one year and ordered to pay another $1,000.00 under the second count (setting up lottery). Spires was

found guilty only on the first (conspiracy) count and received a sentence of three years and was ordered to pay a fine of $1,000.00.

The case was appealed to the South Carolina Supreme Court upon exceptions appearing in the Transcript of Record, pages 279-286. The exceptions were all overruled by the South Carolina Supreme Court. This petition is based on those matters relating to rights guaranteed every citizen under the Constitution of the United States.

SPECIFICATIONS OF ERROR TO BE URGED

The Supreme Court of the State of South Carolina erred:

(1) In failing to hold that these petitioners were subjected to double jeopardy by being tried under two separate indictments, reciting the same facts and relating to a single crime as a matter of law.

(2) In holding that the indictments containing two counts fairly and fully informed these petitioners of the charges so as to allow them to defend themselves properly.

(3) In failing to hold that these petitioners were denied due process by being tried for conspiracy to commit a statutory crime which by definition requires **concerted action.**

REASONS FOR GRANTING THE WRIT

The petitioners were tried under two indictments; each set out the exact same facts and circumstances. One alleged that the petitioners did "conspire and band themselves together to publicly and privately erect, set up, and expose to be played a certain lottery and undertaking in the nature of a lottery. * * *" The other alleged that the petitioners did "willfully and unlawfully and in furtherance of a common design, pubicly and privately erect, set up and

expose to be played a certain lottery and undertaking in the nature of a lottery * * *"

Conspiracy, a common law crime, is difficult to define, but it was evolved as a criminal legal weapon to be used against those who cannot be reached by the usual methods of the law. The extension of the conspiracy doctrine has, however, resulted in making the criminal court of a playground or judicial abuse.

The dangers of the extension of this doctrine are extensively suggested in the concurring opinion of Mr. Justice Jackson in *Krulewitch v. United States*, 336 U. S. 440, 69 S. Ct. 716, 93 L. Ed. 790.

As Mr. Justice Jackson remarks in regard to the federal law of conspiracy, "Its history exemplifies the 'tendency of a principle to expand itself to the limit of its logic'." Further, Mr. Jackson shows that conspiracy originated in the criminal equity administered in the Star Chamber. It allows the introduction of evidence—otherwise inadmissible—upon the assumption from the first of the trial that the conspiracy existed. Further in the *Krulewitch case*, Mr. Jackson said:

> "A co-defendant in a conspiracy trial occupies an uneasy seat. There generally will be evidence of wrongdoing by somebody. It is difficult for the individual to make his own case stand on its own merits in the minds of the jurors who are ready to believe that birds of a feather are flocked together * * *"

With these principles in mind, we direct the Court's attention to the conspiracy charges against these petitioners.

The South Carolina statute on lotteries involved reads as follows:

"Section 1231. **Penalty for setting up lotteries.**—Whoever shall publicly or privately erect, set up or expose to be played, drawn or thrown at, any lottery, under the denomination of sales of houses, lands, plate, jewels, goods, wares, merchandise, or other things whatsoever, or for money, or by any undertaking whatsoever, in the nature of a lottery, by way of chances, either by dice, lots, cards, balls, numbers, figures or tickets, or who shall make write, print or publish or cause to be made, written, or published, any scheme or proposal for any of the purposes aforesaid, and shall be convicted of any of the offenses aforesaid, on any indictment for the same, at the court of general sessions, shall forfeit the sum of one thousand dollars, one-third thereof to and for the use of this State, one-third part thereof to the informer, and the other third part thereof to the county where the offense shall be committed; and shall, also, for every such offense, be committed by the said court to the common jail for the space of twelve months."

It is important to note that the statute not only makes the person who erects or sets up the lottery liable but it also covers the person "who shall make * * * or cause to be made * * * any scheme or proposal for any of the purposes aforesaid. * * *"

It is apparent that any act which might be included in a conspiracy indictment is fully and effectively included in the **statute itself**. This principle is applicable to the three specifications of error upon which we petition this Court for a writ of certiorari.

I

There is no doubt about the rule that the commission of a substantive offense and a conspiracy to commit it are generally separate and distinct. See 15 C. J. S., pp. 1072-1075 (Conspiracy No. 47 (a & b)). A merger will take place only in a limited class of cases.

These exceptions are generically stated by Wharton in 2 Criminal Law No. 1339 as follows:

> "When to the idea of an offense plurality of agents is logically necessary, conspiracy, which assumes the voluntary accession of a person to a crime of such a character that it is aggravated by a plurality of agents, cannot be maintained * * *"

An indictment for conspiracy will not lie for the offense of bribery, for example, since the participation of two persons and concert of action were essential to the substantive offense. *United States v. Burke*, 1915, 221 Fed. 1014. Such offenses as bigamy, adultery and fornication will not ordinarily also support an indictment for conspiracy.

The test is whether of not every element essential to proof of the substantive offense is essential to proof of the conspiracy. *Freeman v. United States*, 146 F. (2d) 978. A legislative body has the power to create separate and distinct offenses growing out of the same act, but whenever it appears that the proof of one offense proves every essential element of another growing out of the same act, the Fifth Amendment limits the punishment to a single act. *Gavieres v. United States*, 220 U. S. 338, 31 S. Ct. 421, 55 L. Ed. 489.

The effect of these indictments and trials was therefore to subject these defendants to double jeopardy in violation of the Fifth Amendment. The same facts may support two indictments based on crimes distinct in point of law. *Gavieres v. United States, supra.*

But where the **facts** and the **law** are the same in each indictment, the defendants are subjected to double jeopardy. These cases come within the exceptions to the rule against merger by virtue of the wording of the statute itself.

II

These defendants were indicted on two counts charging the same facts and the same violation—for all of the elements of conspiracy at common law are included in and covered by the South Carolina statute on lotteries.

This, we urge, confounded them in their defense of the cases since they were unable to determine from the language of the indictments themselves what evidence would be brought against them at the trial. Were they "informed of the nature and cause of the accusation?" Sixth Amendment, Constitution of the United States.

Certainly the indictments contained the language of the statute itself, but the first count heaped on top of the statute iself the common law crime of conspiracy. That was covered by the statute. The first count of the indictment should therefore have been quashed in order to guarantee these defendants a fair trial.

III

Finally we petition for a writ of certiorari on the grounds that these defendants have by this trial been denied the due process guaranteed them by the Fifth and Fourteenth Amendments to the Constitution of the United States.

The sentences meted out present the argument in graphic form. The lottery statute fixed the sentence for the operation or setting up of a lottery or for any acts in contemplation of operating or setting up a lottery at one year; under the conspiracy theory these defendants, for the self-same acts, were given three years each—two years more than specified in the statutory enactment.

This extension of the criminal code by judicial act savors strongly of an *ex post facto* law. At common law, the

setting up of a lottery was not a crime, and lotteries would be allowed in South Carolina without a statutory prohibition. The legislature of a state has the duty to enact the criminal laws; the courts cannot extend the doctrine beyond the statutory enactment.

At common law, no indictments could have been based on a conspiracy to set up a lottery—unless, of course, illegal means were used to do what was otherwise a lawful act. The South Carolina legislature has seen fit to declare the setting up or operation of any lottery a crime, but in that definition the legislature has seen fit to include all the elements of a conspiracy to set up a lottery.

The extension of the doctrine of conspiracy is **at best** a dangerous extension of the criminal law by judicial fiat. Here is an extension in the face of a statutory enactment.

This, we submit, was a denial of due process of law for the petitioners.

CONCLUSION

We make this petition to this Court with great hope. While this appeal may not be allowed on technical grounds, we think it time for this Court to halt this pernicious conspiracy doctrine. It is perverting courts of justice into wicked tools for the infliction of wrong.

Where will it end? Assuredly, a conspiracy to violate the parking ordinance or a common design to jay walk do not subject the "law breakers" to penitentiary sentences. What reason is there here to indict for conspiracy? None—for the statutory enactment on lotteries covers the field.

The criminal cannot be allowed to measure his punishment on a contractural basis—*i. e.*, on the proposition that for a given crime, he can be assured of a definite maximum sentence—and no more. But our guarantee of liberty for

every citizen—regardless of station or estate—can be thwarted and twisted by the Star Chamber doctrine of conspiracy.

It is to this Court's conscientious and consistent regard for our most precious possession—individual liberty—that we address this petition. Conspiracy! It is an awesome charge; it is easy to bandy about; it provides an ample net for catching the sneak; but its seine may gather in the innocent as well.

Conspiracy is a weapon to be used against criminals not otherwise subject to punishment. But the doctrine must have limits; such a limit has been delineated in the South Carolina Statute.

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AUGUSTUS T. GRAYDON,
HUGH M. McAULAY,
Attorneys for the Petitioners.

APPENDIX

Indictment—Two Counts

At a Court of General Sessions, begun and holden in and for the County of **RICHLAND** in the State of South Carolina, at **RICHLAND COUNTY** Court House, in the County and State aforesaid, on the **Second** Monday of **December**, in the year of our Lord, one thousand nine hundred and **fifty**.

The Jurors of and for the County aforesaid, in the State aforesaid, upon their oath, Present:

That **GEORGE W. FERGUSON, CARL JOLLY, D. O. SPIRES, W. W. WALKER, DAVID DUVALT, TOLBERT MILES, EDDIE WEBBER, MELL JOHNSON, JOSH GILMORE, WILLIE BLAKE, PEARL JONES, LUCINDER SMITH, ADA TAYLOR, ROBERT LYKES, SARAH DAVIS, LOUIS WALLACE, WILLIE SUBER, AURELIA MICKENS, AND JOHN GLASPER,**

First Count

late of the County and State aforesaid, on the **4th day of June** in the year of our Lord one thousand nine hundred and **fifty** with force and arms, at **Richland County Court House** in the County and State aforesaid, **did wilfully and unlawfully agree, confederate, conspire and band themselves together to publicly and privately erect, set up, and expose to be played a certain lottery and undertaking in the nature of a lottery, wherein and whereby the use of certain numbers, figures, tickets or chances were TO BE HAD AND OFFERED TO CERTAIN PERSONS UNKNOWN, WHEREIN AND WHEREBY for the payment of certain sums of money, differing in amounts, the holders of the said numbers, figures, tickets or chances were to participate in a lottery and undertaking in the nature of a lottery, commonly known as the "numbers game," whereby said sums of money to be paid were to be ventured for the chances of obtaining larger sums in money; and that in pursuance of said agreement and conspiracy, and in furtherance of the said common design, they the said GEORGE W. FERGUSON, CARL JOLLY, D. O. SPIRES, W. W. WALKER, DAVID DUVALT, TOLBERT MILES, EDDIE**

WEBBER, MELL JOHNSON, JOSH GILMORE, WILLIE BLAKE, PEARL JONES, LUCINDER SMITH, ADA TAYLOR, ROBERT LYKES, SARAH DAVIS, LOUIS WALLACE, WILLIE SUBER, AURELIA MICKENS, AND JOHN GLASPER, late of the County and State aforesaid, did on the 4th day of June, in the year of our Lord, one thousand nine hundred and fifty, with force and arms at Richland County Court House, wilfully, unlawfully, publicly and privately erect, set up and expose to be played a certain lottery and undertaking in the nature of a lottery, wherein and whereby the use of certain numbers, figures, tickets or chances were had and offered to certain persons unknown, wherein and whereby for the payment of certain sums of money, differing in amounts the holders of the said numbers, figures, tickets or other chances were entitled to participate in a lottery and undertaking in the nature of a lottery, commonly known as the "numbers game," whereby said sums of money paid were ventured for the chances of obtaining larger sums in money, against the form of the Statute made in such case and provided against the peace and dignity of the State.

AND THE JURORS AFORESAID, UPON THEIR OATH AFORESAID, DO FURTHER PRESENT: That GEORGE W. FERGUSON, CARL JOLLY, D. O. SPIRES, W. W. WALKER, DAVID DUVALT, TOLBERT MILES, EDDIE WEBBER, MELL JOHNSON, WILLIE BLAKE, PEARL JONES, LUCINDER SMITH, ADA TAYLOR, ROBERT LYKES, SARAH DAVIS, LOUIS WALLACE, WILLIE SUBER, AURELIA MICKENS, late of the County and State aforesaid, did on the 4th day of June, in the year of our Lord One Thousand Nine Hundred and Fifty, with force and arms at Richland County Court House in the State aforesaid, wilfully and unlawfully and in furtherance of a common design, publicly and privately

Second Count

erect, set up, and expose to be played a certain lottery and undertaking in the nature of a lottery, wherein and whereby the use of certain numbers, figures, tickets, or chances

were had and offered to certain persons unknown, wherein and whereby for the payment of certain sums of money, differing in amounts, the holders of the said numbers, figures, tickets or chances were entitled to participate in a lottery and undertaking in the nature of a lottery, commonly known as the "numbers game," whereby said sums of money paid were ventured for the chances of obtaining larger sums in money, against the form of the Statute in such case made and provided against the peace and dignity of the State.

And the Jurors aforesaid, upon their oath aforesaid, do further Present, That **GEORGE W. FERGUSON, CARL JOLLY, D. O. SPIRES, W. W. WALKER, DAVID DUVALT, TOLBERT MILES, EDDIE WEBBER, MELL JOHNSON, JOSH GILMORE, WILLIE BLAKE, PEARL JONES, LUCINDER SMITH, ADA TAYLOR, ROBERT LYKES, SARAH DAVIS, LOUIS WALLACE, WILLIE SUBER, AURELIA MICKENS AND JOHN GLASPER,** late of the County and State aforesaid, on the **4th** day of **June** in the year of our Lord one thousand nine hundred and **fifty,** with force and arms, at **Richland County Court House** in the County and State aforesaid, did **wilfully and unlawfully offer for sale and did sell to certain persons unknown certain lottery tickets, figures, and chances, wherein and whereby for the payment of certain sums of money, differing in amounts the holders of the said numbers, figures, tickets and chances were entitled to participate in a lottery and undertaking in the nature of a lottery, commonly known as the "numbers game," whereby said sums of money paid were ventured for the chances of obtaining larger sums in money,** in such cases made and provided and against the peace and dignity of the State.

(s) T. P. TAYLOR,
Solicitor.

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BRIEF IN OPPOSITION TO CERTIORARI

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BASIS OF JURISDICTION

The Petitioners invoke the jurisdiction of this Court under Title 28, Section 1251, paragraph 3, U. S. Code.

The Respondent respectfully submits that Section 1251 (3) is not applicable in this instance since it refers to the original jurisdiction of this Court of actions between one State and citizens of another State. It will be noted that the Petitioner Spires is a citizen of South Carolina. (See Transcript of Record, p. 221.)

Respondent contends that the proper Statute applicable in the instant case is Section 1257 of Title 28, the pertinent provisions of which are as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision can be had, may be reviewed by the Supreme Court as follows: • • •
>
> By Writ of Certiorari, • • • where any title, right, privilege or immunity is specially set up or classes under the Constitution of the United States."

In order to obtain review in this Court, Petitioners must also comply with Rule 38 of the Court, the applicable portion of which is as follows:

> "5. A review on Writ of Certiorari is not a matter of right, but of sound judicial discretion and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons which will be considered.
>
> (a) Where a State Court has decided a federal question of substance not theretofore determined by this Court, or have decided it in a way probably in accord with applicable decisions of this Court."

THERE IS NO FEDERAL QUESTION INVOLVED

The Petitioners, in seeking the review by this Court of the judgment of the Supreme Court of South Carolina, which upheld the conviction of the Petitioners, contend that they have been subjected to being placed in jeopardy twice for the same offense, and further that they have been denied due process of law. This contention is based on the theory that in this instance where a common-law conspiracy, including an overt act in furtherance of the conspiracy, is alleged in one count, and a substantive offense (statutory) is alleged in a separate count of the same indictment, there will be a merger of the two separate crimes into one. They, therefore, contend that the two crimes having merged, they should have been charged with, and could have been convicted of, only one crime, that of the substantive offense

rather than both the crime of conspiracy and the substantive offense.

It is respectfully submitted that such a merger does not take place in a case such as the one presently before the Court. In this case, there is alleged a common-law conspiracy which, under the laws of South Carolina, constitutes a misdemeanor. As a second count, a violation of the lotteries law is alleged, which is also a misdemeanor. Section 1231, Code of Laws of South Carolina, 1942.

The conspiracy count contained allegations alleging an overt act in furtherance of the conspiracy. In similar language which conforms with the language of the statute, the substantive offense was alleged.

While it is unnecessary, under the South Carolina law, to allege an overt act, such was done in this case. This could be considered as being surplusage and, therefore, of no effect. 15 CJS 1131, Conspiracy, Sec. 88.

An examination of the Lotteries Law State of South Carolina, cited above and quoted at page 7 of the Petition and Argument accompanying the Petition, will show that a conspiracy to violate the Lotteries Law and the actual violation of the Lotteries Law are two separate and distinct offenses, and the proof of one is different from the proof of the other. Had nothing more been accomplished than a meeting at which it was agreed, among the parties, that a "numbers racket" would be started, the conspiracy would then be complete. Then, to go a step further and show a violation of the statute itself, it would be necessary to prove the actual setting up and operation of the "numbers racket". The Jury has found the evidence sufficient to convict the Petitioner Ferguson on both the conspiracy to operate and the actual operation of the "numbers racket", and as to the Petitioner Spires, they have found

the evidence sufficient to convict for conspiracy alone. The Supreme Court of South Carolina has further found the evidence sufficient in upholding the conviction.

We feel that we need only cite one case of this Court concerning the question of merger of the conspiracy with the substantive offense. In *Pinkerton v. United States,* 328 U. S. 641, 66 S. Ct. 1180, 90 L. Ed. 1489, this Court held that in an indictment charging violation of the Internal Revenue Code, there was no merger of the conspiracy with the substantive offenses set out.

We shall quote at length from the *Pinkerton case, supra.* On the question of merger, the Court had this to say:

> "It has been long and consistently recognized by the Court that the commission of the substantive offense and a conspiracy to commit it are separate and distinct offenses * * * A conviction for the conspiracy may be had though the substantive offense was completed, (Citing cases) and the plea of double jeopardy is no defense to a conviction for both offenses * * *."

Quoting further from this case:

> "A conspiracy is a partnership in crime. *United States v. Socony-Vacuum Oil Co.,* 310 U. S. 150, 253, 84 L. Ed. 1129, 1183, 60 S. Ct. 811. It has ingredients, as well as implications, distinct from the completion of the unlawful project. As stated in *United States v. Rabinowich,* 238 U. S. 78, 88, 59 L. Ed. 1211, 1215, 35 S. Ct. 682, 42 Am. Banker Rep. 255:
>
> " 'For two or more to confederate and combine together to commit or cause to be committed a breach of the criminal laws, is an offense of the gravest character, sometimes quite outweighing, in injury to the public, the mere commission of the contemplated crime. It involves deliberate plotting to subvert the laws, educating and preparing the conspirators for further and habitual criminal practices. And it is characterized

by secrecy, rendering it difficult of detection, requiring more time for its discovery, and adding to the importance of punishing it when discovered.'

"And see *Sneed v. United States* (CCA 5th) 298 F. 911, 912, 913, 37 A. L. R. 772; *Banghart v. United States* (CCA 4th) 148 F. (2d) 521.

"Moreover, it is not material that overt acts charged in the conspiracy counts were also charged and proved as substantive offenses. As stated in *Sneed v. United States, supra* (CCA 5th) 298 F. p. 913, 'If the overt act be the offense which was the object of the conspiracy, and is also punished, there is not a double punishment of it.' The agreement to do an unlawful act is even then distinct from the doing of the act."

We feel that the *Pinkerton case* and those portions quoted therefrom dispose of all questions raised by the Petitioner, including that of due process of law. The Petitioners were tried in form and course under the laws of the State of South Carolina. Throughout the course of the proceedings, from the time of the arrest of the Petitioners to the present time, they were represented by able and astute counsel who have prepared their case well. They have been afforded every opportunity which the law provides. They have shown no federal question necessitating the review by this Court.

CONCLUSION

One who seeks review of a state court's judgment in this Court has the burden of establishing the Court's jurisdiction. *Memphis Natural Gas Co. v. Beeler,* 315 U. S. 649, 62 S. Ct. 857, 86 L. Ed. 1090. The Petitioners have failed to meet this burden becsause the question which they now seek to raise has been determined adversely to their con-

tention by decisions of this Court. Certiorari should be denied.

Respectfully submitted,

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